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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 33

CHARLES DOWD BOX CO., INC.,
Petitioner,

v.

JOHN F. COURTNEY et al, as They Fairly Represent the Membership of the United Steelworkers of America, AFL-CIO, and its Local 5158,
Respondents.

BRIEF OF WISCONSIN EMPLOYMENT RELATIONS BOARD, AMICUS CURIAE

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BRIEF OF WISCONSIN EMPLOYMENT RELATIONS BOARD, AMICUS CURIAE

QUESTION PRESENTED

Did Congress intend, by authorizing suits in federal courts for violation of collective bargaining contracts, to deprive the parties of their traditional right to resort to state tribunals for relief?

POSITION OF WISCONSIN EMPLOYMENT RELATIONS BOARD, AMICUS CURIAE

The Wisconsin Employment Relations Board appears *amicus curiae* in this case because of the importance of the issue to the thousands of litigants who might have closed to them, if petitioner's contentions were adopted, the doors of state tribunals to which they have become accustomed to resort for convenient and effective relief for violation of their contract rights. It is important, too, to members of local communities who are not directly involved in such disputes, that there be kept available all possible facilities to resolve disagreements about contracts, so that the economic warfare which performance of contracts is designed to prevent may be avoided.

There are thousands of cases, reported and unreported, in which both parties to a contract desire that a local tribunal resolve a dispute about its meaning or application, and the tribunal's jurisdiction is not challenged. If, however, it should be held that Congress has preempted the enforcement of collective bargaining contracts so as to make the jurisdiction of federal courts exclusive, local tribunals would have to deny relief, no matter how desperately the adjudication might be desired by both parties to the dispute. If jurisdiction is lacking, it cannot be conferred by private parties.

The board respectfully represents that under sec. 301 of the Labor Management Relations Act, 1947, federal and state tribunals have concurrent jurisdiction over cases involving violation of collective bargaining contracts, for the following reasons:

ARGUMENT

I.

OUSTER OF STATES FROM THEIR TRADITIONAL AUTHORITY TO GRANT REMEDIES FOR CONTRACT VIOLATIONS CAN BE ACCOMPLISHED ONLY BY CLEAR MANIFESTATION OF CONGRESSIONAL INTENT

This cause deals with the question of jurisdiction to enforce collective bargaining contracts. Traditionally, enforcement of contracts has been a field governed exclusively by state law.

It is pointed out in *Restatement, Conflict of Laws*, p. 395, in the scope note to Chapter 8 on Contracts, that:

> "Whether a contract exists is a question of the contract law of some state."

This court adhered to that principle when it held in *Erie Railroad v. Tompkins*, (1938) 304 U.S. 64, 78, 82 L. ed. 1188, 58 S. Ct. 817, 114 A.L.R. 1487 that, except "in matters governed by the Federal Constitution or by Acts of Congress", there is no general federal law relating to contracts.

There is no provision of the United States Constitution authorizing Congress to regulate contracts as such. The Act of Congress here involved is not one purporting to deal with contracts generally, which would be outside the Constitutional delegation of Congressional powers, but one enacted under the power to regulate commerce, in a field "primarily of interest to the state" and "until recent times left entirely to state conrol."*

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*Bethlehem Steel Co. v. New York State Labor Rel. Bd., (1947) 330 U.S. 767, 772, 67 S. Ct. 1026, 91 L. ed. 1234.

It does not automatically follow that, because Congress has exercised power over commerce in the contract field, states are wholly excluded from their traditional function of resolving disputes over contracts made and to be performed within their borders. In the minds of many who would abolish our dual system of government, an enactment by Congress under its power to regulate commerce seems automatically to accomplish the same effect as a constitutional amendment to deprive states of all reserved jurisdiction in any related field. Such an effect should not be given to a Congressional enactment, at least unless "the subject matter is not so 'intimately blended and intertwined with responsibilities of the national government' that regulation of the subject matter itself raises an 'inference of exclusion.'"*

From the careful delimitations indicated by this court in the earlier cases in which it met the challenges to the power of Congress to regulate an intrastate enterprise because of its effect on commerce (see, for example, *National Labor Relations Bd. v. Jones & Laughlin S. Corp.*, (1937) 301 U.S. 1, 81 L. ed. 893, 57 S. Ct. 615 and *Consolidated Edison Co. v. National Labor Relations Bd.*, (1938) 305 U.S. 197, 83 L. ed. 126, 59 S. Ct. 206), it would have been difficult to predict the degree of state exclusion exemplified in *Guss v. Utah Labor Relations Board*, (1957) 353 U.S. 1, 77 S. Ct. 598, 1 L. ed. 2d 601.

The gamut between those extremes was covered only by 20 years of careful search for Congressional intent. In this case, it is sought to bridge the gap from "Congress may" to "states may not" in the few years elapsed since *Textile Workers Union v. Lincoln Mills of Ala.*, (1957) 353 U.S. 448, 1 L. ed. 2d 972, 77 S. Ct. 912.

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*Bethlehem Steel Co. v. New York State Labor Rel. Bd., (1947) 330 U.S. 767, 772, 67 S. Ct. 1026, 91 L. ed. 1234.

A number of authorities are quoted by the petitioner to the effect that the federal government "should" assume responsibility and exclude states (Petitioner's Brief, pp. 14-15). These are subjective opinions which should carry weight, if at all, only before a legislative tribunal.

This court has in every case held that the means of determining respective responsibilities of national and local governments is to ascertain Congressional intent, rather than to resort to the opinions of either laymen or experts as to what the law "should" be.

Congressional intent is to be obtained primarily from the words Congress used, from the legislative history, and from the purpose of the enactment.

II

THE WORDS USED BY CONGRESS DO NOT MANIFEST AN INTENT TO OUST STATES OF THEIR TRADITIONAL JURISDICTION TO ENFORCE CONTRACTS

The words out of which the court has heretofore read Congressional intent to preempt labor relations to the exclusion of states are primarily those contained in Sec. 10 (a) of the Labor Management Relations Act (61 Stat. 146, 29 U.S. C. § 160 (a)) under which the National Labor Relations Board is empowered to "prevent any person from engaging in any unfair labor practice (listed in sec. 8) affecting commerce", and giving that board authority "to cede * * * jurisdiction" under certain circumstances. The authority to "cede" jurisdiction implies the correlative authority to withhold, and gives rise to the inference

that, in the absence of cession, the jurisdiction of the board is exclusive.

In Sec. 301 (a) of the act, (61 Stat. 156, 29 U.S. C. § 185) on the other hand, it is provided only that suits for certain contracts "may" be brought in federal courts, not that they *must* be. There is no provision, as so easily could have been supplied if Congress had so intended, that the jurisdiction of federal courts should be exclusive.

III

THE LEGISLATIVE HISTORY INDICATES THAT CONGRESS INTENDED THE REMEDY IN FEDERAL COURTS SHOULD BE IN ADDITION TO OTHER REMEDIES

The legislative history of sec. 301 of the Labor Management Relations Act, 1947, which authorizes suits in federal courts for violation of collective bargaining contracts, gives no indication of an intent to exclude the traditional jurisdiction of state courts over such suits.

A. Congress Rejected Provisions Which Would Have made Violation of Collective Bargaining Contracts an Unfair Practice

The Congress declined, as pointed out by this court in *Textile Workers v. Lincoln Mills,* (1957) 353 U.S. 448, 77 S. Ct. 912, 1 L. ed. 2d 972, to enact a provision which would have made it an unfair practice to violate the terms of a collective bargaining agreement, on the ground that enforcement of such a contract should be left to "the usual processes of the law."

House Conf. Report #510 on H.R. 3020, 80th Cong., 1st Sess.,

1 Legislative History of the Labor Management Relations Act 1947, 545-546, states:

"The Senate amendment contained a provision which does not appear in section 8 of existing law. This provision would have made it an unfair labor practice to violate the terms of a collective bargaining agreement or an agreement to submit a labor dispute to arbitration. The conference agreement omits this provision of the Senate amendment. Once parties have made a collective bargaining contract *the enforcement of that contract should be left to the usual processes of the law and not to the National Labor Relations Board.*" (Emphasis supplied)

Previous to the 1st session of the 80th Congress, decisions that any field in labor relations had been preempted were limited to conduct protected by sec. 7 or made an unfair practice under sec. 8. Congress must have been aware of these decisions, so that its refusal to include contract violations in the unfair practice definition was a declination to preempt the subject matter.

B. The Conference Reports Recommending Adoption of Sec. 301 Indicated a Congressional Desire to Expand, Rather than to Restrict, Means of Enforcement of Collective Bargaining Contracts

The philosophy underlying legislation to provide adequate means of enforcing collective bargaining contracts is summarized in the following statement of former President Truman quoted in Senate Report 105, 80th Cong. 1st Session, 1 Legislative History of the Labor Management Relations Act 1947, 422:

" 'We shall have to find methods not only of peaceful negotiations of labor contracts, but also of insuring industrial peace for the lifetime of such contracts. Contracts once made must be lived up to and should be changed only in the manner

agreed upon by the parties. If we expect confidence in agreements made, there must be responsibility and integrity on both sides in carrying them out.'"

It was to implement a more effective enforcement of collective bargaining contracts by providing an *additional* remedy that sec. 301 was enacted, as indicated in the following excerpts from Congressional reports.

House Report 245 on H.R. 3020, 80th Cong., 1st Session, 1 Legislative History of the Labor Management Relations Act 1947, 337:

"When labor organizations make contracts with employers, such organizations should be *subject to the same judicial remedies and processes in respect of proceedings involving violations* (Emphasis supplied)

Senate Report 105 on S 1126, 80th Cong., 1st session, 1 Legislative History of the Labor Management Relations Act 1947, 423, after discussing the then existing limitations to obtaining judicial remedies for violations of contracts between employers and labor organizations, summarized:

"It is apparent that until *all jurisdictions*, and particularly the Federal Government, authorize actions against labor unions as legal entities, there will not be the mutual responsibility necessary to vitalize collective-bargaining agreements. * * *" (Emphasis supplied)

In debate after the veto of the bill, the Honorable Joseph H. Ball stated the effect of the provisions relating to suits against labor organizaions, 2 Legislative History of the Labor Management Relations Act 1947, 1627:

"The President says the law would expose unions to suits for acts of violence, wildcat strikes, and other actions, none of which were authorized or ratified by them. This is not so. We have simply provided that unions are *subject to the same general laws or agency as any other corporation or citizen* in determining their liability for the acts of the agents." (Emphasis supplied)

Similarly, Senator Robert A. Taft stated in 2 Legislative History of the Labor Management Relations Act 1947, 1654:

"* * * Some of the provisions of this bill deal with the question of making the unions responsible. There is no reason in the world why a union should not have the *same responsibility that a corporation has which is engaged in business.* So we have provided that a union may be sued *as if it were a corporation.* * * *" (Emphasis supplied)

C. The Expressed Opinions on Which the House Adopted the Act Were to the Effect that it Would not Interfere with Administration of State Laws

The debates on adoption of the conference report included express reassurance that the bill would not interfere with laws of states. In response to a question by Mr. Kersten of Wisconsin, Mr. Hartley, co-author of the bill, responded as follows: (See 1 Legislative History of the Labor Management Relations Act 1947, 883):

"* * * I would like to ask the gentleman about that portion which pertains to the validity of State laws. Wisconsin and other States have their own labor relations laws. We are very anxious that disputes be settled at the State level insofar as it is possible. Can the gentleman give us assurance on that proposition, so that it is a matter of record, that that is the sense of the language and of the report?

"MR. HARTLEY. That is the sense of the language of the bill and of the report. That is my interpretation of the bill, that this will not interfere with the State of Wisconsin in the administration of its own laws. In other words, this will not interfere with the validity of the laws within that State.

"MR. KERSTEN of Wisconsin. And *it will permit as many of these disputes to be settled at the State level as possible?*

"MR. HARTLEY. *Exactly.*" (Emphasis supplied)

IV

OUSTER OF JURISDICTION OF STATE TRIBUNALS WOULD BE INCONSISTENT WITH THE CONGRESSIONAL PURPOSE TO INCREASE EXPEDITIOUS REMEDIES FOR ENFORCEMENT OF COLLECTIVE BARGAINING CONTRACTS

One of the underlying purposes of federal regulation of labor relations is to encourage agreements through collective bargaining, as a substitute for the types of economic pressure tending to interfere with the uninterrupted production of goods and services in which the public has a stake. As pointed out by former President Truman (see ante, p. 7-8), collective bargaining can serve its purpose only if such agreements are observed by both sides. Parties who are frustrated in their attempts to obtain prompt and effective means of enforcing their contracts are relegated to the economic warfare which the federal act seeks to avoid.

The purpose of Congress was to insure as fully as possible the observance of contracts by *augmenting* rather than *restricting* means of enforcement.

As pointed out in the Congressional reports, there were some jurisdictions in which procedure for enforcement of labor contracts was difficult, and the proposed legislation was intended to fill such partial void by making available an easier remedy. As stated by Senator Ball: (2 Leg. History of the Labor Management Relations Act 1947, 1497):

> "Fourth, we give to employers the right to sue a union in interstate commerce, in a Federal Court, for violation of contract. It does not go beyond that. As a matter of law, I think they have that right, now, but because unions are voluntary associations, the common law in a great many States requires service on every member of the union, which is very difficult; and, if a judgment is rendered, it holds every member liable for the judgment."

There were, however, many jurisdictions in which collective bargaining agreements were readily enforceable in state tribunals both by and against unions. In Wisconsin see, as a few examples:

Wisconsin Motor Corp. v. Wisconsin E. R. Board, (1956) 274 Wis. 85, 79 N.W. 2d 119;

Aluminum Goods Mfg. Co. v. Wisconsin E. R. Board, (1956) 271 Wis. 597, 74 N.W. 2d 154;

Dunphy Boat Corp. v. Wisconsin E. R. Board, (1954) 267 Wis. 316, 64 N. W. 2d 866;

Wisconsin E. R. Board v. Gateway Glass Co., (1953) 265 Wis. 114, 60 N. W. 2d 768;

International Union v. Wisconsin E. R. Board, (1951) 258 Wis. 481, 46 N. W. 2d 185;

Pabst Brewing Co. v. Wisconsin E. R. Board, (1948) 252 Wis. 346, 31 N. W. 2d 515;

Nash-Kelvinator Corp. v. Wisconsin E. R. Board, (1945) 247 Wis. 202, 19 N.W. 2d 255.

In the foregoing cases, there were settled promptly in state tribunals urgent disputes about provisions of collective bargaining contracts which might otherwise have been the subject of bitter economic warfare.

In all cases, the disputes were adjudicated far more expeditiously than could be done by usual procedures in federal court.*

Wisconsin, among other states, has provided an expeditious administrative remedy which can be handled without counsel, if desired, and can prevent the long, festering period of grievances which must await formal court trial. This may not be true in all states, but Congress surely did not mean to abolish expeditious remedies in state tribunals where they *are available*, and to require that injured parties resort to slower and more formalized procedure. Surely Congress intended to make it possible for every party whose rights have been infringed through violation of a collective bargaining contract to have an expeditious and effective remedy for his wrongs, and for him to choose the one most readily available to him.

The term "forum-shopping" has been brought into arguments as if it were something new and reprehensible. The possibility of "forum-shopping" has existed throughout the history of our constitutional government—in the fields of contracts and of torts among others, without undermining our dual system of government or working havoc in our system of economy.

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*As one of many examples there is pending in a federal district court of Wisconsin a suit on a collective bargaining contract which was filed more than two years ago and which has not even progressed to the stage of a pre-trial conference. *Winnebago Lodge #1947 of International Association of Machinists v. Kirkhaefer Aeronautic Motors, #58-C-272*, Eastern District of Wisconsin.

Is not the right to "forum-shop" for the fastest and best remedy exactly what Congress intended should be available to parties whose rights have been violated by breach of a collective bargaining agreement? Congress wished to assure an effective means of enforcement for all such parties, in order to avoid industrial clashes.

It is the need for quick determination of sore differences which has led to the submission of thousands of disputes to arbitration. Certainly there is no prevailing uniformity in arbitration awards, but is equally certain Congress did not intend to preclude arbitration because of the possibility of different awards in similar cases.

Where states do not provide adequate procedure, Congress intended to open federal courts to litigants. Where states provide a procedure preferable to a party whose contractual rights have been transgressed, surely Congress did not intend to deny the preferred remedy and relegate that party to one which he may deem slower, less readily available, or more expensive.

V.

THERE IS NO POTENTIAL CONFLICT IN ENFORCEMENT OF COLLECTIVE BARGAINING CONTRACTS BY FEDERAL AND STATE TRIBUNALS WHICH WOULD FRUSTRATE CONGRESSIONAL OBJECTIVES.

A. This Court Has Held that Congress Left Jurisdiction to States as to Conduct Neither Protected by Sec. 7 or Made an Unfair Practice Under sec. 8

This court has pointed out in *Garner v. Teamsters Union*, (1953) 346 U.S. 485, 488, 74 S. Ct. 161, 98 L. ed. 228, that the legislation now before the court "leaves much to the states."

In the case of *United Workers v. Laburnum Corp.*, (1954) 347 U. S. 656, 74 S. Ct. 833, 837, 838, 98 L. ed. 1025, where the United States Supreme Court denied the contention of the petitioners that "the Act of 1947 has occupied the labor relations field so completely that no regulatory agency other than the National Labor Relations Board and no court may assert jurisdiction over unfair labor practices as defined by it, unless expressly authorized by Congress to do so," the court said:

> "* * * The care we took in the Garner case to demonstrate the existing conflict between state and federal administrative remedies in that case was, itself, a recognition that if no conflict had existed, the state procedure would have survived. * * *"

The potential conflict by reason of which states have been held to be ousted of jurisdiction has always heretofore been related to the administrative power of the single centralized agency designated by Congress to carry out Congressional policies—the National Labor Relations Board. The court explained

that point of view in *La Crosse Telephone Corp. v. Wisconsin Employ. Rel. Bd.*, (1949) 336 U. S. 18, 69 S. Ct. 379, 93 L. ed. 463:

> "We went on to point out that the National Board had jurisdiction of the industry in which those particular employers were engaged and had asserted control of their labor relations in general. Both the state and the federal statutes had laid hold of the same relationship and had provided different standards for its regulation. Since the employers in question were subject to regulation by the National Board, we thought the situation too fraught with potential conflict to permit the intrusion of the state agency, even though the National Board had not acted in the particular cases before us."

The court later defined the area of potential conflict in the third *Garmon case* (*San Diego Building Trades Council, etc. v. Garmon,* (1959) 359 U. S. 236, 79 S. Ct. 773, 3 L. ed. 2d 775, as that in which activities are "arguably protected by section 7 of the National Labor Relations Act or constitute an unfair practice under §8." In such cases that question must "be left in the first instance to the National Labor Relations Board."

B. Violation of Collective Bargaining Contracts is Neither Protected by Sec. 7 nor Made an Unfair Practice Under Sec. 8

Certainly it cannot be argued that violation of a collective bargaining contract is "protected by §7." It is equally clear that Congress deliberately refused to make such violation "an unfair practice under sec. 8."

C. If Congress Had Intended Absolute Uniformity of Results in Each Case, it Would have Provided for Jurisdiction in a Single National Agency Instead of in Several Hundred Courts

Congress has not designated a specialized agency such as the National Labor Relations Board to prescribe a uniform national policy to control proceedings for enforcement of contracts. The exclusive authority of the National Labor Relations Board has been the basis for decisions denying jurisdiction not only of state tribunals, but also of federal courts.

Instead of making a contract violation an unfair practice to be dealt with exclusively by the National Labor Relations Board, Congress conferred remedial jurisdiction upon several hundred federal tribunals. History of jurisprudence shows that among those tribunals there is as much conflict as among any other group of tribunals.

Even though federal substantive law is applicable, there is as much room for conflict among federal district courts as among state tribunals. The lack of uniformity in the many federal districts in application of federal law is illustrated by the Pilot Institute on Sentencing reported in 26 FRD 231 et seq., in which the explanation of the objectives of the institute included the following statement made by Attorney General Cummings in 1938:

> "My studies of the disposition of criminal cases in several courts have led me to the conclusion that there frequently occur wide disparities and great inequities in sentences imposed in different districts, and even by different judges in the same district for identical offenses involving similar states of fact."

If such disparity is possible where federal substantive law is defined by statute, even greater disparity is likely where it has not been fully defined by Congress.

If substantive federal law is developed, state tribunals are as much obligated to apply it as are federal tribunals; and if any litigant is denied a right guaranteed him by federal law he is as free to seek redress by appeal from state tribunals as from federal tribunals.*

D. The Federal Rights Here Involved Were Not Newly "created" By Congress, Nor did Congress Provide a Special Remedy as it Did for Unfair Practices

It is conceded that if the right were one created by a Congressional enactment by which a specific remedy were also provided, there might be a basis for inferring a Congressional intent that the remedy should be exclusive. That is not the situation here.

In the first place, the right to enter an enforceable collective bargaining contract was not "created" by Congressional enactment. As this court pointed out in *Amalgamated Utility Workers v. Consol. Edison Co.*, (1940) 309 U.S. 261, 263, 84 L. ed. 738, 60 S. Ct. 561:

*Hill v. State of Florida, (1945) 325 U. S. 538, 65 S. Ct. 1373, 89 L. ed. 1782; Garner v. Teamsters Union, (1953) 346 U. S. 485, 74 S. Ct. 161, 98 L. ed. 228; San Diego Building Trades Council v. Garman, (1957) 353 U.S. 26, 77 S. Ct. 607, 598, 1 L. ed. 2d 601; International Union etc. v. O'Brien (1950) 339 U.S. 454, 70 S. Ct. 781, 94 L. ed. 978; Wisconsin E. R. Board v. Plankinton Packing Co. (1950) 338 U.S. 953, 70 S. Ct. 491, 94 L. ed. 588; Wisconsin E. R. Board v. Milwaukee G. L. Co., (1950) 258 Wis. 1, 44 N.W. 2d 547; Wisconsin E. R. Board v. Amalgamated Asso., (1950) 257 Wis. 43, 42 N. W. 2d 471; International Union v. Wisconsin E. R. Board, (1951) 258 Wis. 481, 46 N. W. 2d 185.

"Neither this provision, nor any other provision of the Act, can properly be said to have 'created' the right of self-organization or of collective bargaining * * *. In *National Labor Relations Board v. Jones & McLaughlin Steel Corp.*, 311 U. S. 1, 33, 34, we observed that this right is a fundamental one; that employees 'have as clear a right to organize and select their representatives for lawful purposes' as the employer has 'to organize its business and select its own officers and agents' * * *"

Further, the National Labor Relations Act, which originally guaranteed the right of collective bargaining, provided no specific remedy for violation of contracts. The use of a federal court for enforcement of collective bargaining contracts was later authorized by the Taft-Hartley Act to enable the courts to deal with such cases under the usual judicial procedures. Congress made no effort to establish a detailed, specific remedy comparable to that before the National Labor Relations Board.

When a right is not "created" solely by federal statute, but previously existed in most jurisdictions, opening the doors of federal courts carries no implication of an intent to deny other remedies. Indeed, there would be no such implication even with respect to a federally created right, since state tribunals have historically furthered Congressional policies through enforcement of federal rights.

E. State Courts Have Always Had the Duty to Enforce Federal Substantive Law in Appropriate Cases

This court held in *Textile Workers Union v. Lincoln Mills of Ala.*, (1957) 353 U. S. 448, 1 L. ed. 2d 972, 77 St. Ct. 912, that federal courts must develop a substantive federal law with respect to enforcement of collective bargaining contracts. The need

for application of federal substantive law is no obstacle to jurisdiction of state tribunals.

The rule is summarized in 14 Am. Jur. 441, that:

> "* * * In regard to state courts the law is also said to be settled that courts of general jurisdiction therein have power to decide cases involving the rights of litigants under the constitution or statutes of the United States unless deprived of the right so to do by the terms of the Federal Constitution or acts of Congress."

One of the leading decisions expounding the foregoing rule is in *Second Employers Liability Cases,* (1912) 223 U. S. 1, 56-59, 56 L. ed. 327, 32 S. Ct. 169, 38 L.R.A. (n.s.) 44, which held that rights arising solely under Congressional acts could, as of right, be enforced in state tribunals having adequate jurisdiction under state law. Much of the reasoning of that case is equally appropriate here:

> "* * * we deem it well to observe that there is not here involved any attempt by Congress to enlarge or regulate the jurisdiction of state courts or to control or affect their modes of procedure, but only a question of the duty of such a court, when its ordinary jurisdiction as prescribed by local laws is appropriate to the occasion and is invoked in conformity with those laws, to take cognizance of an action to enforce a right of civil recovery arising under the act of Congress and susceptible of adjudication according to the prevailing rules of procedure. * * *
>
> "The suggestion that the act of Congress is not in harmony with the policy of the State, and therefore that the courts of the State are free to decline jurisdiction, is quite inadmissible, because it presupposes what in legal contemplation does not exist. When Congress, in the exertion of the power confided to it by the Constitution, adopted that act, it spoke for all the people and all the States, and thereby established a policy for

all. That policy is as much the policy of Connecticut as if the act had emanated from its own legislature, and should be respected accordingly in the courts of the State. * * *

"'* * * The fact that a state court derives its existence and functions from the state laws is no reason why it should not afford relief; *because it is subject also to the laws of the United States, and is just as much bound to recognize these as operative within the State as it is to recognize the state laws.* The two together form one system of jurisprudence, which constitutes the law of the land for the State; and the courts of the two jurisdictions are not foreign to each other, nor to be treated by each other as such, but as courts of the same country, having jurisdiction partly different and partly concurrent . . .'

"We are not disposed to believe that the exercise of jurisdiction by the state courts will be attended by any appreciable inconvenience or confusion; but, be this as it may, it affords no reason for declining a jurisdiction conferred by law. The existence of the jurisdiction creates an implication of duty to exercise it, and that its exercise may be onerous does not militate against that implication. Besides, it is neither new nor unusual in judicial proceedings to apply different rules of law to different situations and subjects, even although possessing some elements of similarity, as where the liability of a public carrier for personal injuries turns upon whether the injured person was a passenger, an employe or a stranger. But it never has been supposed that courts are at liberty to decline cognizance of cases of a particular class merely because the rules of law to be applied in their adjudication are unlike those applied in other cases.

"We conclude that rights arising under the act in question may be enforced, as of right, in the courts of the States when their jurisdiction, as prescribed by local laws, is adequate to the occasion." (Emphasis supplied)

See, also, *State of Missouri v. Taylor,* (1934) 266 U. S. 200, 69 L. ed. 247, 45 S. Ct. 47, 42 A.L.R. 1232.

VI

STATE COURT DECISIONS INDICATE A PRESSING NEED FOR REMEDIES IN LOCAL AS WELL AS IN FEDERAL TRIBUNALS TO ATTAIN THE OBJECTIVES OF COLLECTIVE BARGAINING.

State courts have uniformly held that jurisdiction of local tribunals to grant remedies for contract violations is not abolished by sec. 301 of the Labor Management Relations Act, 1947. While state court decisions are in no way controlling upon this court, the frequency with which litigants resort to state courts and the unanimity of opinion of such courts exemplifies the urgency of the need for as many and as convenient tribunals as possible to resolve disputes.

The following is a partial list of decisions of state appellate courts in which it has been held that sec. 301 does not abolish jurisdiction of state tribunals:

McCarroll v. Los Angeles County Dist. Coun. of Car., (1957) 315 P. 2d 322, 49 Cal. 2d 45, cert. denied 355 U.S. 932;

Connecticut Company v. Division 425, etc. (1960) 164 A. 2d 413, 147 Conn. 608;

Coleman Company v. International Union, etc., (1957) 317 P. 2d 831, 181 Kan. 969, 973-974;

Courtney v. Charles Dowd Box Co., (1960) 169 N.E. 2d 885, ___ Mass. ___;

McLean Distrib. Co. v. Brewery & Bev. Drivers, etc., (1959) 94 N. W. 2d 514, 521, 254 Minn. 204;

Miller v. Kansas City Power & Light Co., (1960) 332 S. W. 2d 18, ___ Mo. ___;

General Electric Co. v. International Union, (1952) 108 N.E. 2d 211, 93 Ohio App. 139, 153-156, appeal dismissed 158 Ohio St. 555;

International Longshoreman's Assn. v. Harvey Aluminum, (1961) 359 P. 2d 112, ___ Ore. ___;

Springer v. Power Tool Corp., (1960) 348 P. 2d 1112, 220 Ore. 102;

Anchor Motor Freight N.Y. Corp. v. Local Union #445, (1958) 171 N.Y.S. 2d 511, 5 A.D. 2d 869;

Steinberg v. Mendel, etc., (1957) 9 Misc. 2d 611, 167 N.Y.S. 2d 685;

Philadelphia Marine Trade Assn. v. International Longshoreman's Assn., (1955) 115 A. 2d 419, 382 Pa. 326, 332-333;

General Bldg. Contractors' Assn. v. Local Union #542, (1952) 87 A. 2d 250, 254, 370 Pa. 73, 79-80, 32 A.L.R. 2d 822;

Teamsters Local 174 v. Lucas Flour Co., (1960) 356 P. 2d 1, ___ Wash. ___;

Clark v. Hein-Werner Corp., (1959) 99 N.W. 2d 32, 100 N.W. 2d 317, 8 Wis. 2d 264.

In the case of *McCarroll v. Los Angeles County, etc. Carpenters, supra,* the court said: (*loc. cit.* 49 Cal. 2d 45, 59)

"It does not necessarily follow from a decision that federal law governs the rights of the parties that state courts are ousted of jurisdiction to enforce those rights. As Mr. Justice Bradley stated in *Claflin v. Houseman,* 93 U.S. 130, 136 [23 L.Ed. 833], '[I]f exclusive jurisdiction [in the federal courts] be neither express nor implied, the State courts have concurrent jurisdiction [to enforce federal rights] whenever by their own constitution, they are competent to take it.' Concurrent jurisdiction exists 'where it is not excluded by express provision, or by incompatibility in its exercise arising from the nature of the particular case.' (See *Gerry of California v. Superior Court,* 32 Cal.2d 119, 122-123 [194 P.2d 689].)

"Section 301 does not expressly exclude state courts. On the contrary, it merely declares that an action for breach of a collective bargaining agreement may be brought in a federal court. Surely if Congress had intended to exclude state courts it would have used more forthright language. Nor does enforcement of collective bargaining agreements in state courts conflict with any federal policy embodied in section 301 or any other part of the federal statute. Defendants contend that the rationale of *Garner v. Teamsters etc. Union,* 346 U.S. 485 [74 S.Ct. 161, 98 L.Ed. 228], and *Weber v. Anheuser-Busch, Inc.,* 348 U.S. 468 [75 S.Ct. 480, 99 L.Ed. 546], which excludes state court jurisdiction over unfair labor practices in order that the National Labor Relations Board may be free to develop a consistent federal policy, applies equally to exclude state court jurisdiction over actions that could be brought under section 301. Section 301, however, does not confide jurisdiction to one expert tribunal for the development of federal policy, but on the contrary gives jurisdiction to all the federal district courts. The possibility of conflict between state and federal courts is no greater than the possibility of conflict among the federal courts themselves, with uniformity ultimately dependent in either case on review by the United States Supreme Court. Moreover, federal courts are no more expert than state courts in the interpretation of contracts."

For each case such as those above cited, which reaches an appellate court on a jurisdictional challenge, there are many others in which no such challenge is made or in which determinations of trial courts are not appealed. The frequency with which litigants resort to state, as well as to federal, tribunals indicates that the parties whose rights have been infringed recognize the need for both federal and state tribunals to settle the disputes which might otherwise explode into industrial warfare.

There can no longer be any question that federal courts have authority to develop and apply a substantive national law in cases brought before them by parties to collective bargaining contracts. To impose on federal courts alone the duty to handle all such litigation would create an overwhelming responsibility which could be alleviated substantially by assistance of other tribunals under obligation to apply the same substantive law.

CONCLUSION

It is not primarily the interests of governmental tribunals nor the rights of states which motivate this brief; it is the need of the parties to collective bargaining contracts to avail themselves of the nearest, most convenient, and most expeditious tribunal in order to serve the national purpose of having disputes resolved through "processes of justice" instead of "the more primitive methods of trial by combat."

Respectfully submitted

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